

Remarks

Claims 71-87 are pending in the application. It was mistakenly noted in the Office Action that claims 1-102 are pending. Applicants bring to the Examiner's attention the Preliminary Amendment filed concurrently with this application on July 25, 2003 and the transmittal papers filed therewith, both of which indicate cancellation of claims 1-70 and 88-102, with the intent to prosecute remaining claims 71-87. Copies of the Preliminary Amendment and the Transmittal papers are included in this Response for the Examiner's convenience. Applicants respectfully request reconsideration by the Examiner in light of the concurrently filed Terminal Disclaimer and the following Remarks.

Double Patenting

Claims 71-87 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-34 of U.S. Patent No. 6,554,857. Applicant's disagree with the Examiner's position regarding double patenting, but in the interest of expediting prosecution of this application, Applicant's file concurrently with this Response a Terminal Disclaimer, disclaiming the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of U.S. Patent No. 6,554,857. Applicants assert that the filing of the Terminal Disclaimer obviates the double patenting rejection, and thus claims 71-87 are now allowable.

Conclusion

In view of the filing of the Terminal Disclaimer, Applicants respectfully request that the rejections of the claims be withdrawn and that claims 71-87 be allowed to issue.

Please contact the attorney listed below if there are any further questions regarding this application.

Respectfully submitted,


David P. Ruschke, Registration 40,151

Attorney for Applicant(s)

CUSTOMER NUMBER 27581

Phone: 763-505-2913



CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on the date appearing below.

By Juanita I. Traufler Medtronic Inc.
Juanita I. Traufler Date 7-25-03

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s) : Zilla, Peter et al.)
Serial No. : Unassigned)
Filed : July 25, 2003) Group Art Unit:
For : Transmural Concentric Multilayer Ingrowth) 3738
Matrix Within Well-Defined Porosity) Examiner:
Docket No. : P8794.05 Continuation 2) Phan, Hieu

PRELIMINARY AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants file a continuing application to serial number 10/142,957 to prosecute the non-elected claims 71-87 (Attorney Docket No. P8794.05 c2).

Applicants submit with cancellation of claims 1-70 and 88-102 and request examination of remaining claims 71-87. Contained with the submitted documents is applicant's information disclosure (copies of the documents were previously submitted and are requested to be forwarded to the present application).

In the Claims

Cancel claims 1-70 and 88-102 with out prejudice.

Respectfully submitted,

Kenneth J. Collier July 24, 2003
Kenneth J. Collier
Attorney/Agent for Applicant(s)
Registration No. 34,982
Phone: 763-505-2521



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
UTILITY PATENT APPLICATION TRANSMITTAL

PATENT

Attorney Docket No.: P-8794.05 C2
Express Mail No.: EV 331792373 US

First Named Inventor or Application Identifier: Peter Paul Zilia; Deon Bezuidenhout; Theresa Dower
Title: TRANSMURAL CONCENTRIC MULTILAYER INGROWTH MATRIX WITHIN WELL-DEFINED POROSITY



CERTIFICATE UNDER 37 CFR SECTION 1.10: I hereby certify that this New Application Transmittal and the documents referred to as enclosed therein are being deposited with the United States Postal Service, in an envelope address "EXPRESS EV 331792373 US addressed to Box Patent Application, Commissioner of Patents and Trademarks, Washington, D.C. 20231, on this JULY 25, 2003.

Juanita I. Traufler
Printed Name

Signature

A handwritten signature in black ink that reads "Juanita I. Traufler".

Mail Stop BOX PATENT APPLICATION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

We are transmitting the following:

- Patent Application Transmittal
- Specification
 - Total Pages: 29 (cover/title page 1 sheet; specification 15 sheets; claims 12 sheets; abstract 1 sheet)
- Drawings
 - Total Sheets: 3 (formal; informal)
- Combined Declaration and Power of Attorney:
 - Newly executed (Unsigned)
 - Copy from prior application
 - Deletion of inventor(s) -- signed statement attached deleting inventor(s) named in the prior application (37 CFR 1.63(d)(2) and 1.33(b))
 - Incorporation by reference -- *The entire disclosure of the prior application, from which a copy of the oath or declaration is supplied above is considered as being part of the disclosure of the accompanying application and is hereby incorporated by reference herein.*
- Accompanying application parts:
 - Notification of filing a Continuation Divisional Continuation-in-Part
 - Assignment of the invention to Medtronic, Inc.
 - Assignment cover sheet
 - Information Disclosure Statement
 - PTO Form 1449
 - Request to Use Prior Submitted Sequence Listing in Accordance with 37 CFR 1.821(e), 1.821(g), 1.825(b) or 1.825(d)
 - Preliminary Amendment
 - A copy of the Petition or Condition Petition for Extension of Time in the prior application
 - Return postcard

IF A CONTINUING APPLICATION:

- Continuation Divisional Continuation-in-Part
of prior application no. 10/142,957 FILED MAY 10, 2002.
- Amend the specification by inserting before the first line the sentence: This application is a Continuation Divisional Continuation-in-Part
of application number 10/142,957 FILED MAY 10, 2002.
- Cancel in this application original claims 1-70 and 88-102 of the prior application before calculating the filing fee. (At least one of the original independent claims must be retained for filing purposes.)
- The prior application is assigned of record to Medtronic, Inc.
- The Power of Attorney in the prior application is to: REED DUTHLER.

This application claims the benefit of U.S. Provisional Application(s) Serial No. 60/144,703 filed 7/20/99;
09/434,069 filed 11/05/99 and 10/142,957 filed 05/10/02.

Address all future correspondence to:

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FEE CALCULATION

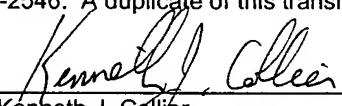
| | No. Of Claims Filed | Claims Included in Base Fee | No. Of Extra Claims | Rate | Fee |
|------------------------------------|----------------------------|------------------------------------|----------------------------|--------------|-----------------|
| Total Claims | 17 | 20 = | | x \$ 18 | \$ 54.00 |
| Independent Claims | 1 | 3 = | | x \$84 | |
| Multiple Dependent Claim(s) | | 0 = | | + \$ 270 | |
| Basic Filing Fee | | | 0 | | \$750.00 |
| | | | | TOTAL | \$804.00 |

Charge Deposit Account No. 13-2546 the sum of \$750.00 (Filing Fee) and \$54.00 for Total Claims fee for a total of **\$804.00**.

The Commissioner is hereby authorized to charge any fees which may be required under 37 CFR 1.16 and 1.17, or credit any overpayment to Deposit Account No. 13-2546. A duplicate of this transmittal is enclosed.

Date

July 24, 2003


Kenneth J. Collier
Attorney Reg. No. 34,982
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27581

PATENT TRADEMARK OFFICE